

REMARKS

The Examiner has rejected Claim 1. Applicant has amended claim 1. Claim 1 is pending in this application. It is believed that no new matter has been introduced by way of the above amendments to the application, as antecedent basis for the amendments can be found or are readily apparent within the application as filed.

Rejection under 35 U.S.C. §102:

The rejection of Claim 1 has been maintained by the Examiner under 35 U.S.C. §102(b) as being anticipated by Ewing U.S. Patent No. 5,236,749. Applicant respectfully again traverses this rejection for the following reasons.

The Examiner argues that the Ewing reference anticipates Applicant's claimed invention. In order for a claim to be anticipated under 35 U.S.C. §102, a single prior art reference must disclose each and every element of the claimed invention. Structural Rubber Prods. Co. v. Park Rubber Co., 749 F.2d 707, 715, 223 U.S.P.Q. 1264, 1270 (Fed. Cir. 1984). If the reference fails to suggest even one limitation of the claimed invention, the claim is not anticipated. Atlas Powder Co. v. E.I. du Pont De Nemours & Co., 750 F.2d 1569, 1574, 224 U.S.P.Q. 409,411 (Fed. Cir. 1984).

The Examiner has failed to present a single prior art reference that anticipates Applicant's claimed invention. Specifically, despite the Examiner's arguments as to "product-by-process" claim format, the product still cannot be said to be anticipated by the Ewing reference. The Examiner's arguments are that: 1) Ewing discloses an embossed blister formed from a laminated film" (citing cols. 1 and 2); 2) "process limitations are given little or no patentable weight" in a product-by-process claim format, and "the burden is on the Applicant to present evidence from which the Examiner could reasonably conclude that the claimed product differs in kind" from the prior art.

First of all, Ewing does not teach or suggest an *embossed* blister. Ewing does teach a *printed* blister. Applicant's argument in the previous response is repeated herein.

The Examiner maintains the rejection arguing that "printed" and "embossed" can be the same concluding that the "printing" recited in the Ewing reference could be "embossing" as claimed by Applicant. While Applicant maintains for the record that Applicant has clearly set forth what is intended by the term "emboss" in both the specification and claim, Applicant has amended claim 1 to clarify that Applicant's indicia functions as a mold for the deposited dosage form. This is clearly absent from the Ewing reference.

Secondly, the evidence of the difference between the claimed blister pack and that of the prior art is self-evident within the claimed elements. The differences includes those of the product as produced directly by the recited process steps. The Examiner has oversimplified the treatment of product-by-process claim language outside the intent of the case law. The recited process steps in the claim do indeed produce a product distinguishable from the prior art. Applicant's arguments on this point appear in the previous response and are repeated herein, and Applicant maintains the conclusion that the process steps clearly breath meaning, and produce structural elements, into the blister pack product claimed.

Applicant's claimed "advancing movement of the pin controllably stretches the film around the blister in a manner minimizing stretching of the film located at the base of the blister." This recited process step produces a structural feature in the claimed product, i.e., a reduced stretch of the base portion as compared to the film located around the side of the blister. Thus, the recited process step produces a readily apparent difference between the claimed product and that disclosed by Ewing.

The Examiner has nevertheless chosen to continue to disregard the features afforded to the resulting product, i.e., the blister and blister pack, as produced as a result of the recited process steps in the claim, i.e., pin and film contact as defined by the claim. Again, to clarify for the Examiner what is already apparent within the claim itself, Applicant has amended claim 1 to describe the blister structure that results from the controllable stretching process step. This feature is clearly not taught or suggested by the Ewing reference.

In summary, not only has the Examiner failed to present a single reference teaching an embossed blister, but has also failed to account for the structural features in the product that are produced directly as a result of the recited process steps in the claim. Since each and every claim element is not taught by Ewing, claim 1 cannot be said to be anticipated by the reference as a single disclosure. Therefore, a proper rejection in compliance with the requirements of under 35 U.S.C. §102(b) has not been presented by the Examiner.

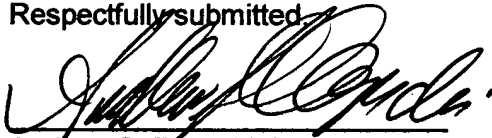
Claim 1 is not anticipated by the Ewing reference within the proper meaning of 35 U.S.C. 102. This rejection should, therefore, be withdrawn.

Conclusion:

In light of the above amendment and remarks, it is believed that the application is now in condition for allowance, and prompt notification to that effect is earnestly solicited. The Examiner is invited to contact the undersigned to discuss the application on the merits if it is believed that such discussion would expedite the prosecution.

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Respectfully submitted,



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